



Comptroller General  
of the United States

Washington, D.C. 20548

147019

## Decision

**Matter of:** AMEWAS, Incorporated--Reconsideration

**File:** B-247656.2

**Date:** June 24, 1992

Roger W. Davis for the protester,  
John R. Tolle, Esq., Barton, Mountain & Tolle, for National Technologies Associates, Inc., an interested party,  
Demetria T. Carter, Esq., Daniel A. Laquaite, Esq., and  
Charles J. McManus, Esq., Department of the Navy, for the agency.

Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where offeror protests contract award, based on agency evaluation and awardee's allegedly unreasonably low price, but does not specifically challenge evaluation of other offerors, it is not an interested party under Bid Protest Regulations where it would not be in line for award if its protest were sustained.

### DECISION

AMEWAS, Inc. requests reconsideration of our dismissal of its protest of the award of a contract to National Technologies Associates, Inc. (NTA) under request for proposals (RFP) No. N00421-90-R-0100, issued by the Naval Air Warfare Center, for test and evaluation program development and program management support services. Based on agency information showing that AMEWAS was not next in line for award if its protest were sustained, we dismissed the protest on the basis that AMEWAS was not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1992).

We affirm the dismissal.

The RFP, as amended, called for a fixed-price, indefinite quantity/indefinite delivery contract. Although technical factors were considered more important than price, the evaluation scheme provided that price could be the deciding factor if proposals were found technically equal. Award was to be made to the offeror whose proposal offered the greatest value to the government in terms of technical capability and cost. AMEWAS, NTA, and a third offeror were

among six offerors in the competitive range. The evaluation of best and final offers (BAFOs) resulted in NTA's BAFO receiving a score of 42.6, AMEWAS' BAFO a score of 45.3, and the third offeror's BAFO a score of 48. The agency determined that the three proposals were technically equal and eliminated AMEWAS' BAFO because its price was more than \$6 million higher than NTA's BAFO.<sup>1</sup> The Navy reviewed the bases for the difference in technical scores between NTA and the third offeror and verified that the two proposals were technically equal. Accordingly, NTA, the offeror proposing the lower price, was awarded the contract.

To be an "interested party" to protest, the protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Here, the third offeror, with a higher technical score and lower price than AMEWAS, would be next in line for award if we were to sustain the protest. Since we found no challenge by AMEWAS to the eligibility for award of this intervening offeror, we concluded that the protester was not an interested party and dismissed AMEWAS' protest. See ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrants its reversal or modification. 4 C.F.R. § 21.12(a); Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. We will not reconsider a prior decision based upon arguments and information that could have and should have been presented during our initial consideration of the protest. Clear Air, Inc.--Second Recon., B-242582.4, May 20, 1991, 91-1 CPD ¶ 481.

AMEWAS argues that it is an interested party because its protest of the award to NTA was based on the agency's failure to properly consider the realism of proposed labor rates in evaluating all proposals. Thus, it contends that it could be in line for award if the evaluation were properly conducted. AMEWAS now notes that in an attachment to its original protest, it stated that "any bid less than \$30/hour should be highly questionable." This, AMEWAS contends, raised the issue that the evaluation was flawed as to all proposals. We disagree.

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<sup>1</sup>In fact, AMEWAS' high price resulted in its combined overall ranking of sixth of the six offerors.

A protest must set forth a detailed statement of the legal and factual grounds of protest. 4 C.F.R. § 21.1(c)(4); see Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. In dismissing AMEWAS' protest, we considered the statement now relied upon by the protester. However, the statement was coupled with a contention that the awardee's labor rate was not reasonable and, thus, in context referred to the evaluation of the awardee. We do not view this isolated reference as sufficient to put in issue the Navy's evaluation of offerors between the protester and NTA. Since such a challenge could have and should have been clearly presented in the original protest, it does not form the basis to modify or reverse our dismissal. Clear Air, Inc.--Second Recon., supra.

In any event, we note that AMEWAS' protest that the agency failed to properly consider price realism in its price evaluation is without merit. The amended RFP provided that unrealistically low prices for any labor category were to be considered under risk assessment. However, offerors were advised in a subsequent letter that fairness and reasonableness would be ensured by the competition and fixed prices, thus, no realism analysis would be performed. Since there was no requirement for price realism evaluation, there is nothing objectionable in the agency's decision to award to NTA which it determined to be the low, responsible offeror. To the extent that AMEWAS is challenging the decision not to conduct a realism evaluation, its protest is untimely. Protests of alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). Here, AMEWAS failed to protest the change before the next closing date.

The dismissal is affirmed.

  
Robert M. Strong  
Associate General Counsel